



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Ernest Guinn  
County Attorney  
El Paso County  
El Paso, Texas

Dear Sir:

Opinion No. 9-3325

Re: Salary of Deputy Constable  
of El Paso County may not  
exceed \$1500.00 per annum.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"Some time ago the Commissioners' Court requested me to advise them as to the maximum amount that could be paid to a Deputy Constable, Precinct 1, El Paso County, Texas, this precinct being the precinct which includes the City of El Paso. At the present time the salary of the Constable is fixed at \$250.00 per month, and he has been allowed two deputies, one being paid the sum of \$100.00 and the other being paid the sum of \$75.00 per month. He has requested an increase in the salary of one deputy to \$125.00 and the other to \$100.00.

"I advised the Commissioners' Court that the only limitation placed upon the salaries of a deputy constable was that contained in Section 17-a of Article 3912-e, placing a maximum of \$1,500.00 a year for deputy constables pay.

"The County judge expressed the opinion that there was some limitation other than this on deputy constables pay, and that the maximum had been allowed at the time that the County placed the Constable of Precinct 1 on a salary basis. The officers' salary law does not limit Constables to a maximum of the

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amount received, as I recall in 1935, but I find no provision limiting the amount of salary of deputies as depending upon the amount of income.

"Would you please advise me whether or not the sole limit placed upon a deputy's salary is Article 3912-e, Section 17-a, thereof, and if not, what is the limitation."

The population of El Paso County, Texas, according to the 1940 Federal Census, is 131,067 inhabitants, and we understand that its precinct officers, as well as county officers, are compensated upon a salary basis.

Article 3912e, Section 17, Vernon's Annotated Texas Civil Statutes, reads as follows:

"(a) The term 'Precinct Officers' as used in this Act means justices of the peace and constables.

"In all counties in this State such precinct officers shall continue to be compensated for their services on a fee basis until the Commissioners' Court shall have determined otherwise in accordance with the provisions of Section 2 of this Act.

"In counties wherein the Commissioners' Court shall have determined that precinct officers shall be compensated on an annual salary basis, but wherein they have determined that county officers shall not be so compensated, the Officers' Salary Fund of said county shall be composed and made up of fees, commissions and other compensation collected by the precinct officers of such county and deposited in said fund, and such funds as may be transferred to said fund by the Commissioners' Court of the county.

"(b) In counties where it shall have been determined that precinct officers shall be compensated on an annual salary basis it shall be the duty of the Commissioners' Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as

compensation earned by him in his official capacity for the fiscal year 1935 and not more than the maximum amount allowed such officer under laws existing August 24, 1935.

"In counties in which precinct officers are paid a salary, as compensation for their services, such officers desiring to appoint one or more deputies or assistants shall make application to the Commissioners' Court for authority to appoint such deputy or deputies, in the manner and form prescribed for applications for deputy county officers by Article 3902, Revised Civil Statutes, 1925, as amended within the provisions of this Act; the Commissioners' Court shall not authorize the appointment of any deputy constable at a salary exceeding Fifteen Hundred (\$1500.00) Dollars per year. The salaries of deputies authorized to be appointed under the provisions of this Section shall be paid out of the Officers' Salary Fund.

"In counties wherein the county officers named in this Act are compensated on the basis of an annual salary, the State of Texas shall not be charged with and shall not pay any fee or commission to any precinct officer for any services by him performed, but said officer shall be paid by the County out of the Officers' Salary Fund such fees and commissions as would otherwise be paid him by the State for such services." (Undersealing ours)

Article 3902, Section 5, Vernon's Annotated Texas Civil Statutes, reads as follows:

"5. In counties having a population of one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants, first assistant or chief deputy not to exceed Twenty-six Hundred (\$2600.00) Dollars per annum; heads of departments may be allowed by the Commissioners' Court, when in their judgment such allowance is justified, the sum of Two Hundred (\$200.00) Dollars per annum in addition to the amount herein allowed, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two continuous

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years; other assistants, deputies or clerks not to exceed Twenty-three Hundred (\$2300.00) Dollars per annum each."

The specific provisions of Article 3912e, Section 17, V. A. C. 8., supra, with reference to Deputy Constables, will clearly control over the general provisions of Article 3902, Section 5, supra, relative to deputies generally, insofar as salaries of deputy constables of El Paso County are concerned.

You are therefore respectfully advised that the salary of a Deputy Constable of El Paso County, Texas, cannot legally exceed the sum of \$1500.00 per annum.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Wm. J. Penning*

Wm. J. Penning  
Assistant

WJF:db

APPROVED APR 1, 1941

*Ernest B. Mann*

ATTORNEY GENERAL OF TEXAS

